IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

STATE OF RAJASTHAN & OTHERS. V. SATYAPRAKASH AND ANOTHER.

D.B. CIVIL SPECIAL APPEAL (W) NO.679/96, against the Order dated 11.10.1996, passed by the learned Single Judge in SBCWP No.726/86.

DATE OF JUDGMENT :::: 27th July, 2007

PRESENT

HON'BLE MR. JUSTICE P.B.MAJMUDAR

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr.B.L.Bhati, for State – appellants.
Mr.M.S.Singhvi, for respondents.

REPORTABLE: BY THE COURT: (PER HON'BLE BHANDARI, J.):-

This appeal is directed against the judgment of the learned Single Judge dated 11th October, 1996, wherein appeal of the petitioner was allowed.

The petitioner non-appellant preferred a writ petition, stating that he was appointed as Laboratory Assistant on

4.9.1965. While working on the post of Laboratory Assistant, he had acquired qualification of B.Ed. in the year, 1976. According to the petitioner non-appellant, he became entitled for the benefit of three grade increments in terms of the Rajasthan Civil Services (New Pay Scale) Rules, 1969 (hereinafter referred to as 'the Rules of 1969') as was amended vide Notification dated 27.10.1971 on acquiring additional qualification of B.Ed.

The petitioner non-appellant was granted benefit of three grade increments on 26.10.1976 by the Department treating him to be entitled for such benefits. However, vide order dated 14.1.1983, the Department had withdrawn the benefit of three grade increments. The petitioner non-appellant, being aggrieved by the said order, preferred an appeal before the Rajasthan Civil Services Appellate Tribunal (for short hereinafter as 'the Tribunal'). The appeal preferred by the petitioner non-appellant was dismissed by the Tribunal. Hence aggrieved by the said judgment, the petitioner preferred writ petition.

The petitioner non-appellant submitted that as per the Notification dated 27.10.1971, Laboratory Assistants were also made entitled for the benefit of three grade increments and, in that regard, specific reference of Annexture-5 (Notification dated 27.10.1971) was given to show that benefit of three grade increments was made available to all the existing employees. It was further submitted that as per the Rules of 1969, category of

Teacher Grade III (General) was consisting of three posts, namely, (i) Grade III Teachers, (ii) Teachers grade III in Deaf, Dumb and Blind Schools, and (iii) Laboratory Assistants. According to the petitioner non-appellant, the additional benefits were given in column 6 of the Revised Pay Scale Rules of 1969, as such the benefits enumerated in the said column were admissible to the category having three posts thus, necessary consequences are that the petitioner non-appellant was entitled for the benefit of three grade increments as was notified vide the Notification dated 27.10.71.

The writ petition so preferred by the petitioner, was thereafter allowed with a direction to provide benefit of three grade increments to the petitioner, with consequential benefits. The order dated 14.1.83 withdrawing the benefit of three grade increments and the order passed by the Tribunal in appeal dated 5.2.86 were set aside. Aggrieved by the said judgment, this special appeal has been preferred by the State of Rajasthan.

Learned counsel appearing for the State of Rajasthan submitted that as per the Revised Pay Scale Rules of 1969, certain benefits were given only to the post of Teachers Grade III and not to all the posts existing in a particular category, having the heading of Teacher Grade III. To clarify this, our attention was drawn to the Revised Pay Scale Rules of 1969, where after giving heading Grade III Teachers (General), three

posts have been named, namely, (i) Grade III Teachers; (ii) Teachers Grade III in Deaf, Dumb and Blind Schools; and (iii) Laboratory Assistants. However, so far as the benefits given in column 6 of those Rules are concerned, it was shown against the posts of Teacher Grade III only and not against other two posts existing at item Nos. 2 and 3. Thus, an argument was canvassed by the learned counsel appearing for the State that the learned Single Judge was not right in granting benefit of three grade increments by treating benefits narrated in column 6 in regard to the category and not attached to the posts. Thus, it was prayed that the judgment of the learned Single may kindly be set aside.

Per contra, learned counsel for the respondents supported the impugned judgment and submitted that the Department has rightly granted benefit of three grade increments and without any cogent reason, it was withdrawn vide the order dated 14.1.83. Learned counsel for the respondents further submitted that all the benefits enumerated in column 6 were provided for all the three posts mentioned in the category having heading Grade III Teachers (General). Thus, it was prayed that respondent was entitled for additional benefits on acquiring qualification of B.Ed.

We have considered the rival contentions of the learned counsel for the parties and gone through the record carefully.

The Rules of 1969 provides various categories of posts which can be called as cadre for the post falling in that category. In the said Rules, Grade III Teachers is one of the categories, having three posts, namely, (i) Post of Grade III Teachers, (ii) Teachers Grade III in Deaf, Dumb and Blind Schools, and (iii) Laboratory Assistants. Thus, in the said category, there exists three posts. Now, the question needs our consideration is as to whether the benefit mentioned in column 6 of those rules were intent to provide benefit to the employees falling in all the three posts forming one category or such benefits were attached to the post of Grade III Teaches alone. The perusal of the Rules of 1969 as was amended by the Notification of 1971, suggests that certain benefits mentioned in column 6 of rules were against the post of Grade III Teachers only. Therefore, only after narrating the post of Grade III Teachers at item No.1, post No.2, i.e., the post of Teacher Grade III in Deaf, Dumb and Blind Schools was narrated after completion of the benefits mentioned in column 6 against the post of Grade III Teachers, therefore, the finding of the learned Single Judge that all the benefits mentioned in column 6 were attached to all the three posts in the category, cannot be accepted more so, when item Nos. 3, 5 and 6 of the benefits mentioned in column 6 sufficiently demonstrates that those benefits were attached to the posts of Grade III Teachers. For ready reference, the relevant portion of the Rules is quoted as

under :-

			(6)
1. Gr. III Teachers	75-200	110-230	(1) Pay in this scale will be admissible to the existing employees as well as fresh recruits subject to the condition that they are at least trained matriculates or they are deemed as trained Matriculate on account of experience under existing orders issued by the Government from time to time or persons with one year Jr. B.S.T.C. or equivalent training irrespective of whether they passed H.S. or H.S.S. prior to training. (2) Existing persons drawing pay in the scale of 75-200 with B.Ed. qualification shall be allowed benefit of 3 advance increments less advance increment received already, if any. (3) Newly recruited untrained teachers appointed in this scale shall get fixed pay of Rs.105/- P.M. (4) Fresh recruits with B.Ed. Qualification shall get initial pay of Rs. 125/- in this scale. (5) Existing untrained teachers who do not possess the qualifications mentioned above and are drawing pay of Rs. 105/- or less than Rs. 105/- in the existing Scale will receive fixed pay of Rs. 105/- until trained or is deemed as trained under existing orders. (6) The pay of an existing untrained teachers in the existing pay scale of 75-200 drawing pay more than 105/- p.m. but ot exceeding Rs. 130/- p.m. shall be fixed at the minimum pay of the New Pay Scale until

			he gets trained or is deemed as trained under existing orders and the difference between the pay in the existing pay scale and the pay fixed at the minimum of the New Pay Scale, if any, shall be treated as personal pay to be absorbed in future increments.
(2) Teachers Gr. III in Deaf, Dumb and Blind Schools.	75-200	110-230	
(3) Laboratory Assistants	90-225	110-230	

The rule quoted above, was amended by the Notification dated 27.10.71 (at Annex.5), wherein the only amendment made was in regard to item No.2 mentioned in column 6. Hence, taking note of the fact that leaving other benefits to be intact, only amendment was made in item No.2 of column 6 quoted above. Thus, it becomes clear that benefits attached to the post of Grade III Teachers, were kept as it is, except a minor amendment in item No.2. Hence, amendment by Notification dated 27.10.71 cannot continue to create a provision attached to the category but remains to a particular post only. Thus, in view of these facts, the finding of the learned Single Judge calls for no interference.

The matter is required to be examined from another angle also. It is to be seen whether Government had any intention to provide additional benefit to the post of Lab. Assistant. For that

purpose, it is required to be seen the benefit given to the employees. Perusal of Notification dated 27.10.71 makes it clear that an additional benefit was allowed on acquiring the qualification of B.Ed. which is not an essential qualification attached to the post of Laboratory Assistant. B.Ed. Course is a training for teaching provided, hence in view of the above fact also, it cannot be accepted that an additional benefit can be given on acquiring B.Ed. qualification, though it has no nexus to the post. Thus also, the argument of the learned counsel for respondent raised during the course of hearing of this appeal, cannot be accepted, to say that the Laboratory Assistants are undertaking teaching work. Firstly, there exists no factual foundation for this secondly, in the light of the judgment of the Hon'be Supreme Court reported in AIR 2007 SCW 2867, Rajasthan Public Service Commission v. Kaila Kumar Paliwal & Another, argument of the learned counsel for the non-appellant cannot be accepted, though in the judgment referred to above, the issue was regarding appointment on the post of Headmaster of Secondary School where one of the essential qualifications for appointment by promotion was provided with five years' teaching experience. The Hon'ble Apex Court held that experience as Laboratory Assistants cannot be considered towards experience of High School Teacher, because requisite experience provided under the rules was teaching experience of

high school classes for 5 years. Thus,it cannot be said that Laboratory Assistant has possessed teaching experience of high school.

In view of the reasons given above, we hold that amended Notification dated 27.10.71 does not permit any additional benefit to the Laboratory Assistant. Thus, the direction issued by the learned Single Judge for grant of such benefits cannot be affirmed. Hence, while setting aside the judgment of the learned Single Judge dated 11th October, 1996, we affirm the judgment passed by the Tribunal dated 5.2.1986.

The appeal is accordingly allowed. There will be no order as to costs.

(MUNISHWAR NATH BHANDARI),J. (P.B.MAJMUDAR), J.

scd.